

State of California
Regional Water Quality Control Board
San Diego Region

EXECUTIVE OFFICER SUMMARY REPORT
October 9, 2002

ITEM: 7

SUBJECT: Administrative Assessment of Civil Liability against Paolone Brothers Investments for failure to pay annual storm water fees. (Tentative Order No. R9-2002-0314) (*Vicente Rodriguez*)

PURPOSE: To consider the wavier of right to request a hearing from Paolone Brothers Investments, the comments received during the 30-day comment period, and an order adopting assessment of Administrative Civil Liability of \$570 as proposed in Complaint No. R9-2002-0196. If the Regional Board does not adopt the tentative order, the matter will proceed to a hearing at a future Regional Board meeting.

PUBLIC NOTICE: The 30-day comment period for this matter began August 26, 2002 and ended September 26, 2002. The 30-day comment period was noticed on the Regional Board's September agenda and the Regional Board's web page. The State Water Control Board's Water Quality Enforcement Policy recommends that a public comment period should be provided prior to the settlement of any ACL.

DISCUSSION: The item before the Regional Board is to consider the adoption of an order assessing civil liability.

On August 2, 2002, *Complaint No. R9-2002-0196 for Administrative Civil Liability (ACL)* was issued by the Regional Board Executive Officer to the Paolone Brothers Investments discharger. The discharger is alleged to have failed to pay the required annual fees in the amount of \$250 that were due on March 3, 2002 for continued enrollment under the state's stormwater construction permit.

The discharger, upon receipt of Complaint No. R9-2002-0196, paid the proposed amount and waived the right to request a hearing before the Regional Board.

BACKGROUND

The discharger holds waste discharge requirements prescribed by the California Regional Water Quality Control Board, San Diego Region (Regional Board) and, therefore, shall pay an annual fee pursuant to Section 13260 of the California Water Code. The annual fee was computed in accordance with Water Code Section 13260 and Title 23, California Code of Regulations, Section 2200.

The violation for non-payment is deemed to have occurred from March 3, 2002 to July 31, 2002, for a total of 150 days.

Civil liability should be imposed on Paolone Brothers Investments by the Regional Board in the amount of \$570 for the violations cited above. The civil liability is based on a greater emphasis for the first 90 days after the fee was due (assessed at \$5 per day for the first 90 days and \$2 per day from 90 to 150 days late) this is the same rate used for the other complaints that were issued on the same date for the same violations. The calculated average liability per day is \$3.80.

No comments were received during the comment period.

LEGAL CONCERNS: None.

SUPPORTING DOCUMENTS:

1. Tentative Order No. R9-2002-0314
2. Waiver of Hearing Form
3. Complaint No. R9-2002-0196

RECOMMENDATION: Adopt tentative Order No. R9-2002-0314.

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

**TENTATIVE
ORDER NO. R9-2002-0314**

**ADMINISTRATIVE ASSESSMENT OF CIVIL LIABILITY
AGAINST
PAOLONE BROTHERS INVESTMENTS
FOR FAILURE TO PAY ANNUAL FEES**

The California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), finds the following:

1. Paolone Brothers Investments has violated Section 13260(d) of the California Water Code which requires that each person for whom waste discharge requirements have been prescribed pursuant to Water Code Section 13263 shall pay an annual fee according to a fee schedule established by the State Water Resources Control Board (State Board). Paolone Brothers Investments, hereinafter discharger, is regulated under WQ Order No. 98-07, Construction Storm Water Permit. The discharger's total unpaid storm water fees in this matter were in the amount of \$250.
2. In *Complaint No. R9-2002-0196 for Administrative Civil Liability* the Executive Officer proposed imposition of civil liability in the amount of \$570 for the violations alleged in Complaint No. R9-2002-0196.
3. On October 9, 2002, the Regional Board held a hearing to solicit public participation in this matter, and considered the comments of interested persons regarding adoption of this Order.
4. The adoption of this Order is an appropriate resolution of the violations alleged in Complaint No. R9-2002-0196 because of the following reasons:
 - a. The assessment of \$570 is a sufficient amount of liability to deter this discharger and other dischargers from not paying annual fees in the future.
 - b. The assessment of \$570 is consistent with the State Board enforcement assessment matrix for violations characterized as Minor compliance significance and Minor environmental significance.
5. The Regional Board incurred costs totaling \$1,280, which includes preparation of enforcement documents, and public hearings.

October 9, 2002

6. This enforcement action is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, Division 13, Chapter 3, Section 21000 et seq.) in accordance with Section 15308, Chapter 3, Title 14 of the California Code of Regulations.

IT IS HEREBY ORDERED, that pursuant to Section 13261(b) of the California Water Code, that civil liability be imposed on the discharger, Palone Brothers Investment in the amount \$570.

I, John H. Robertus, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an order imposing civil liability assessed by the California Regional Water Quality Control Board, San Diego Region, on October 9, 2002.

TENTATIVE

JOHN H. ROBERTUS
Executive Officer



California Regional Water Quality Control Board San Diego Region

Winston H. Hickox
Secretary for
Environmental
Protection

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9174 Sky Park Court, Suite 100, San Diego, California 92123
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Gray Davis
Governor

WAIVER OF RIGHT TO A HEARING

2002 AUG 19 P 12:06

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

In the Matter Of:

Gennaro Palone
Palone Brothers Investments
22961 Arroyo Vista
Rancho Santa Margarita, CA 92688

Administrative Civil Liability
Complaint No. R9-2002-0196
\$570

By signing below, I agree to waive my right to a hearing before the San Diego Regional Water Quality Control Board with regards to the violations alleged in the above referenced Complaint and to remit payment for the civil liability imposed. I understand that I am giving up my right to be heard, and to argue against the allegations made by the Executive Officer in this Complaint, and against the imposition of, or the amount of, civil liability proposed. I have enclosed a cashier's check or money order made payable to the State Water Resources Control Board for the civil liability imposed.

<u>Gennaro Palone</u> Signature	<u>MEMBER</u> Title	<u>8/14/02</u> Date
<u>by W. P. Ruffalo</u> in his absence (OUT OF TOWN)		
_____ Signature	_____ Title	_____ Date

Palone Brothers Public Hearing Waiver R9-2002-0196.doc

California Environmental Protection Agency

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**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN DIEGO REGION**

In the Matter of)

Gennaro Palone)

Palone Brothers Investments)

22961 Arroyo Vista)

Rancho Santa Margarita, CA 92688)

Complaint No. R9-2002-0196

For

Administrative Civil Liability

YOU ARE HEREBY GIVEN NOTICE THAT:

- 1) Palone Brothers Investments is alleged to have violated provisions of law for which the California Regional Water Quality Control Board, San Diego Region (hereinafter Regional Board), may impose liability under Section 13261 (a) and (b) of the California Water Code.
- 2) If Palone Brothers Investments intends to waive its right to a public hearing before the Regional Board, an authorized agent must sign and return the enclosed waiver form with a cashier's check for the amount of \$570 by 5:00 P.M., Tuesday, August 20, 2002.
- 3) A public hearing on this matter has been scheduled at the Regional Board meeting on
**September 11, 2002,
at the Regional Board Meeting Room,
9174 Sky Park Court, Suite 100, San Diego, California.**
- 4) The meeting is scheduled to begin at 9:00 a.m. A copy of the agenda for the September meeting, which provides information pertaining to submittal of information and hearing procedures, will be sent to you under separate cover toward the end of August 2002.
- 5) At the hearing, Palone Brothers Investments will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Board.
- 6) At the hearing, the Regional Board will determine the validity of the allegations contained herein, and if the allegations are found to be true, will consider whether or not to assess civil liability in the amount proposed by this complaint, or in some other amount. The Regional Board may refer the matter to the Attorney General for judicial assessment of civil liability (with higher maximum liabilities for each violation).

ALLEGATIONS

- 7) Palone Brothers Investments is alleged to have violated Section 13260(d) of the California Water Code which requires that each person for whom waste discharge requirements have been prescribed pursuant to Water Code Section 13263 shall pay an annual fee according to a fee schedule established by the State Water Resources Control Board (State Board). The outstanding fees total \$250 for the facility located at 30142 Avenida de las Banderas, Rancho Santa Margarita.
- 8) The following facts are the basis for the alleged violations in this matter:
- 9) Waste discharge requirements for discharges of storm water associated with construction activities have been issued to Palone Brothers Investments and an annual storm water fee has been assessed accordingly. Palone Brothers Investments was sent the following invoices:
 - a) Invoice No. 36601 for the amount of \$250 sent Feb. 1 and due March 3, 2002 for Fiscal Year 2001 - 2002 (FY 2001)
 - i) First late notice sent on May 29, 2002
 - ii) Second late notice sent on July 12, 2002
- 10) The violation for non-payment is deemed to have occurred for a total of 150 days based on the following days:

Fiscal Year 2001-2002 from March 3, 2002 to July 31, 2002, or 150 days,
- 11) State Board records indicate that Palone Brothers Investments has failed to make payment in response to the invoices and notices.
- 12) On April 24, 2002, the Regional Board sent Palone Brothers Investments a staff enforcement letter that noted the outstanding annual fee and Palone Brothers Investments that failure to pay required annual fees is a violation of provisions of the California Water Code and subject to Administrative Civil Liability Complaint assessing monetary penalties.

MAXIMUM ACL

- 13) Pursuant to Section 13261(b), the total maximum assessment for Palone Brothers Investments is civilly liable is \$150,000 (\$1,000 for each day of violation) for the violation cited above.

Pursuant to the State Water Resources Control Board's Water Quality Enforcement Policy, all ACLs that are not Mandatory Minimum Penalties should be assessed at a level that at a minimum recovers the economic benefit.

August 2, 2002

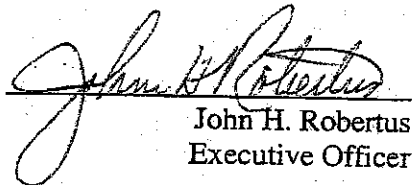
Therefore, the monetary liabilities should be calculated to negate any economic benefit realized by the discharger as a result of the violation. While the fees have remained outstanding, the discharger has continued to enjoy the privilege of discharging waste. During this time, other dischargers have paid the required fees. The discharger has gained an economic benefit in the amount of the fee (\$250) and interest (approximately \$10, assuming 10% per year) which might have accrued on that amount. Therefore, the proposed civil liability shall be within the range of \$560 and \$150,000.

PROPOSED CIVIL LIABILITY

- 14) The proposed amount of civil liability attributed to each violation was determined by taking into consideration the factors specified in Section 13367, economic savings, as well as the maximum civil liability that the Regional Board may assess. **Civil liability should be imposed on Palone Brothers Investments by the Regional Board in the amount of \$570 for the violations cited above.**
- 15) The proposed complaint (\$570) is a separate amount and does not include the amount due (\$250) for payment of the delinquent annual storm water fees
- 16) The Regional Board costs for investigating this incident were approximately \$640.

Dated this 2nd day of August, 2002

By:


John H. Robertus
Executive Officer